

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Bail Appl..No. 6143 of 2007()

CRIME NO.557 OF 2007 OF PALARIVATTOM POLICE STATION

: PETITIONERS/ACCUSED

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1. SUJI JOSE M., S/O. JOSE, AGED 27 YEARS,
MALIYAKKAL HOUSE, P.O.KUZHOOR, PIN-680 734.
 2. RAJESWARI, W/O. SUJI JOSE,
MALIYAKKAL HOUSE, P.O.KUZHOOR, PIN-680 734.
 3. SUDHARSHAN K.K., AGED 23 YEARS,
S/O. KRISHAN, KILIKOTTU HOUSE, P.O.KUZHOOR.

BY ADV. SRI.M.K.ABOOBACKER
SRI.MANSOOR.B.H.

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
PALARIVATTOM POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.6143 of 2007

Dated this the 10th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations in a crime registered under Section 420 I.P.C. The 1st petitioner runs a travel agency. The 2nd petitioner is his wife and the 3rd petitioner is his wife's brother. The crux of the allegations is that all the 3 petitioners together are running the travel agency and that they had induced the victims to part with an amount of Rs.35,000/- on the promise that employment abroad shall be secured for them and visas shall be made available. A publication was allegedly effected in the news papers. The gullible victims had parted with an amount of Rs.35,000/- each. Visas were not offered. The amount was not repaid. It dawned on the victims that all along the intention of the petitioners was to defraud the job seekers to fraudulently induce them to make payments. Investigation is in progress. The petitioners are arrayed as accused 1, 3 & 4. The 2nd accused has already been granted anticipatory bail by this Court as per order dated 20.09.07 in B.A.No.5667/07.

2. The learned counsel for the petitioner submits that the petitioners are absolutely innocent. The 2nd and 3rd petitioners (A3

and A4) have no role at all in the running of the travel agency. The 1st petitioner is facing financial difficulties. He is willing to settle the claim of those who have paid amounts to him. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the victims are left in the lurch. No payments have so far been made to the defacto complainants. This, at any rate, is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. If the petitioners make such payments due to the victims, of course, a lenient view can be taken when they apply for regular bail. The learned Public Prosecutor submits that accused 3 & 4 as per the allegations and as per the materials collected had actively participated in the running of the travel agency and they were also involved in the crime committed.

4. Having considered all the relevant inputs - I have already gone to the case diary in detail while the application for the 2nd accused was considered, I am satisfied that there are no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the

petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. If payments have been made, needless to say, that fact must be reckoned by the court while considering the application for regular bail. It is submitted that the 2nd petitioner is pregnant. If so, she can certainly seek the compassion of law under Sect 437 Cr.P.C.

6. This bail application is, in these circumstances, dismissed. I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-